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IN THE

Supreme Court of the United States

Term, 1966

No. 1254

ABDULLAH AHMAD BEY, ET AL.,
Petitioners

v.

FRANCIS MULDOON, ET AL.,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above case on January 27, 1966.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Appeals has not been reported as yet. The opinion of the District Court is reported at 223 F.Supp. 489. Both opinions are reprinted in the appendix hereto.*

* References to the appendix appended hereto are by the letter "a".

JURISDICTION

The judgment of the Court of Appeals was entered on January 27, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

1. Where only one of many stevedore employers makes financial contributions to a fund created pursuant to the resolution of a labor dispute involving job reduction due to automation, does Section 302(c)(5) of the Labor Management Relations Act permit an entire union membership to participate as beneficiaries of such fund without regard as to whether individual union members were ever employed by the contributing employer?

STATUTES INVOLVED

The only statute involved is Section 302(c)(5) of the Labor Management Relations Act of 1947 [29 U.S.C. §186(c)(5)], as amended, which provides:

> "(c) The provisions of this section shall not be applicable . . . (5) with respect to money or other thing of value paid to a trust fund established by such representative for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents). . . ."

STATEMENT OF THE CASE

Federal jurisdiction in the first instance is based upon Section 302(e) of the Labor Management Relations Act, Title 28 U.S.C. §186(e).

The petitioners commenced this action in the District Court For The Eastern District of Pennsylvania seeking declaratory and injunctive relief pertaining to a trust fund established pursuant to a Collective Bargaining Agreement between the respondents, International Longshoremen's Association, Local 1291 (I. L. A.), and the Philadelphia Marine Trade Association (P. M. T. A.). The Philadelphia Marine Trade Association is an association of companies, including fifteen to eighteen stevedoring companies, rendering marine services in the Port of Philadelphia. It acts as the collective bargaining agent for its members with the I. L. A.

The I. L. A. is the collective bargaining agent for all deep-sea longshoremen who engage in the handling and discharging of ocean-going vessels in the Port of Philadelphia.

The petitioners are longshoremen who are members of the I.L.A. and who formerly were engaged with a fair degree of regularity at the Pennsylvania Sugar Division Pier in the unloading of raw sugar for Jarka Corporation, a stevedoring company and a member of the P. M. T. A.

On December 23, 1959, P. M. T. A. and I. L. A. entered into a collective bargaining agreement. Section 13(d) of that Agreement provides:

> ". . . Should a system of royalties be determined between the parties hereto as an appropriate method of compensating longshoremen who may lose job opportunities as a result of technological advancements, then the amount of such royalty shall be predicated upon the royalties paid for the same or a similar device in the Port of New York, provided that the amount of the royalty shall be in proportion to the royalty paid in New York as the reduction in a number of men employed bears to the reduction in the number of men employed in the Port of New York."

This section was negotiated with the purpose of compensating all longshoremen within the unit of Local 1291 who might lose their job opportunities as the result of technological advances, and was placed into the contract because of the threat to job security which was presented through the various devices of automation, such as containerization and side-port loaders. At the time this agreement was entered into, it was not known that the Pennsylvania Sugar Division intended to alter its method of operation. As a matter of fact, the thought of sugar had not entered the minds of the negotiators.

Shortly after the agreement was entered into, Pennsylvania Sugar notified P. M. T. A. of a proposed change in the method of unloading sugar. Under the new system which was later put into effect, the number of men employed in the unloading operation was significantly reduced from 133 men to less than 60.

P. M. T. A. and I. L. A. then entered into negotiations under Section 13(d) with respect to Pennsylvania Sugar's change in method. On February 26, 1960, pursuant to Section 13(d), the P. M. T. A. and I. L. A. entered into a Supplemental Agreement. By this Agreement, the P. M. T. A.-I. L. A. Local 1291 Royalty Fund was established. Contributions to this fund were to be made by the petitioners' employer, Jarka Corporation, at the rate of twenty-eight cents ($.28) per two thousand two hundred forty pounds (2,240) of sugar unloaded. The disposition of these funds was to be determined at a later date by mutual agreement of the parties. Accordingly, contributions were made by Jarka Corporation to a bank account which was accompanied by a letter from the attorneys representing the P. M. T. A. and I. L. A., instructing the bank not to permit withdrawals from the account until submission of a trust agreement executed by the P. M. T. A. and I. L. A.

Because no trust agreement was executed for a period of more than two years following the first deposit to the bank account, the petitioners, on January 22, 1962, com-

menced an action in the District Court claiming that they alone were entitled to the funds, and requested that a written trust agreement be executed.

On July 19, 1962, or approximately six (6) months after suit was commenced, an Agreement and Declaration of Trust was entered into by the P. M. T. A. and I. L. A. pursuant to Section 13(d) of the Collective Bargaining Agreement. The Trust Agreement provided that the purposes to which the fund could be put might include either supplemental unemployment benefits to those longshoremen credited with nine thousand hours (9,000) during the thirteen (13) preceding years, and/or contributions to an existing welfare fund to maintain eligibility for longshoremen who lost eligibility due to insufficient work, and/or contributions to an existing pension fund, again to maintain eligibility, and/or "such other benefits as are actually feasible."

On May 15, 1963, pursuant to the Agreement and Declaration of Trust, dated July 19, 1962, the trustees of the fund passed a resolution providing for certain disbursements from the Royalty Fund to other P. M. T. A.-I. L. A. jointly administered funds. The petitioners again sought by injunctive process to prevent the transfer of the money and to have the District Court determine their interest in the Royalty Fund.

On June 12 and 13, 1963, a hearing was held and testimony taken before the District Court. Thereafter, on November 21, 1963, the District Court filed an Opinion (p. 2a), in which it rejected petitioners' contentions that they alone were the sole owners of the Fund.

Petitioners had contended before the District Court (p. 10a) that "Section 302 permitted only employees of the employer making the contribution to share in the funds so created, and since only Jarka contributed only its employees may benefit."

The District Court rejected petitioners' contention because of the alleged difficulty in determining who are

Jarka employees. (p. 10a) Instead, the District Court adopted the definition contained in §2 and §6 of the Trust Agreement submitted by Labor and Management because those definitions "recognize the realities of stevedoring-longshoring: a longshoreman is the employe of the waterfront and the waterfront is his employer." (p. 11a) The definitions were broad enough to include the entire union membership. They provided:

> "Section 2—Employer means and includes those stevedores who are members of the PMTA. As of the date of this agreement, the only operation subject to the payment of royalties is the discharging of bulk raw sugar from ocean-going vessels in the Port of Philadelphia under contract with the National Sugar Refining Company, Pennsylvania Sugar Division.
>
> "Section 6—Employee shall mean any employee in the employ of the Employer who shall be included now or shall be included in the future in the collective bargaining unit represented by the Union."

Although the record below clearly established, and the Courts below so found, that Jarka Corporation was the only contributing employer along the entire Philadelphia waterfront, the record was completely barren of evidence that all longshoremen who were members of the I. L. A. have on one occasion or another been employed by Jarka. Notwithstanding these patent facts, the District Court, in holding that the definitions of employer and employee as found in the Trust Agreement did not violate Section 302(c)(5) of the Labor Management Relations Act, in effect permitted the entire union membership of I. L. A. Local 1291 to participate as beneficiaries in a fund created exclusively by the contributions of one stevedoring company, namely Jarka Corporation.

The Court, in arriving at its result, rejected petitioners' contention that the statute should be literally construed

and on the contrary specifically held that "a less than literal interpretation of §302 does no violence to Congressional aims and frustrates no Congressional policy." (p. 13a)

Although the District Court rejected the foregoing contention advanced by petitioners, it did enjoin the respondents from transferring any money from the Royalty Fund on deposit in the bank, and based its continued injunction upon a determination that the Trust Agreement did not meet the requirements of §302(c)(5), as the purpose for which the Fund might be used under the Trust Agreement was not specifically delineated as required by the Act. (p. 10a, 15a).

The Order of the District Court continued the injunction until the respondents exhibited to that Court a trust agreement which was drawn in accordance with the requirements of the Act. On September 29, 1964, the P. M. T. A. and I. L. A. submitted an Amended Trust Agreement which the District Court found to be sufficiently specific in the purposes for which the Fund might be used and, therefore, considered that the original defect had been corrected. Respondents at the time they submitted the amended agreement also moved to dissolve the injunction, and requested the entry of judgment, claiming that they had now complied with the District Court's Order of November 21, 1963, and §302 of the Labor and Management Relations Act.

The District Court on September 29, 1964, upon consideration of the respondents' Motion, entered an Order dissolving the injunction and granting judgment in favor of respondents.

Shortly thereafter an appeal was taken by petitioners to the United States Court of Appeals for the Third Circuit. On January 27, 1966, the Court of Appeals filed a Per Curiam Opinion and affirmed the judgment of the District Court. (p. 3a) The Court of Appeals merely stated that "an examination of the record and of the briefing and a consideration of the oral arguments leads us to the conclusion that the court below committed no error." (p. 3a)

REASONS FOR GRANTING THE WRIT

1. THERE IS CONFLICT BETWEEN COURTS OF APPEALS.

There is irreconcilable conflict between the decision of the Court below and the decision of the Court of Appeals for the Eighth Circuit in *Blassie v. Kroger Company*, 345 F.2d 58 (1965).

The Court of Appeals for the Third Circuit, by affirming the judgment of the District Court and holding that (p. 1a) the "Court below committed no error" has adopted the Trial Judge's Opinion which permits benefits created by a single employer's contributions to a trust fund to be conferred upon an entire union membership consisting of more than two thousand longshoremen, without regard to whether or not a particular union member has at any time been employed by the single contributing employer.

The holding of the Third Circuit is contrary to the decision in *Blassie*, supra, where the Eighth Circuit correctly decided that (p. 71):

> ". . . At the same time we conclude that the statute does not, and the trust agreement therefore cannot, permit the extension of benefits to persons who have never been in the active employ of a contributing employer or to those who, although having been in active employment, were not covered by employer contributions. . . ."

This conflict in the circuits involving the meaning of the statutory phrase "employees of such employers" which the District Court termed "ambiguous" (p. 15a), is of vital importance in the proper civil and criminal administration of the Act, and the delineation of its scope, reasons which this Court found in *United States v. Ryan*, 350 U. S. 299 (1956) and *Arroya v. United States*, 359 U. S. 419 (1959) to warrant the issuance of the writ.

2. THERE IS AN ABSENCE OF A DEFINITE STANDARD TO BE USED IN THE CONSTRUCTION OF THE ACT.

The petitioners contended below that the terms "employer" and "employee" contained in the statutory phrase, ". . . employees of such employer, and their families and dependents (or of such employees, families and dependents jointly with the employees of other employers making similar payments, and their families and dependents) . . ." required a literal construction. (p. 12a)

It was argued that under such a construction, the terms "employees of such employer" should be literally construed in accordance with common understanding and usage to mean a single company and the individuals who work for it, or else the balance of the provision "employers making similar contributions" becomes mere surplusage.

The District Court refused to construe the statute as petitioners contended, stating (p. 13a):

> ". . . a less than literal interpretation of §302 does no violence to Congressional aims and frustrates no Congressional policy. A reading of the legislative history of §302 compels the conclusion that the restriction of 'employees of such employer' was inserted in the Act to serve a limited function . . ."

The Court blinded itself to the significance of its own reference to the legislative history of §302, when it quoted with approval from the Congressional record, which stated (p. 14a):

> "Nor, presumably, did it want a union representing employes of more than one employer to use the funds provided by only one employer for the benefit of all the employes represented by the union without regard to which of the union members had earned the right to this payment. These are the evils that Congress sought to avert and no others have been advanced in explanation of the provision in question . . ."

The District Court can hardly be criticized for construing the statute broadly, rather than restrictively, when no definitive standard in this regard has been forthcoming from this Court.

In *Ryan v. United States*, supra, this Court, when construing the term "representative" appearing in §302, stated that (p. 203), "a narrow reading of the term 'representative' would substantially defeat the Congressional purpose."

Three years later, this Court again construed §302 in *Arroya v. United States*, supra, and stated (p. 424) that, "an examination of the legislative history confirms that a *literal construction* of this statute does no violence to common sense."

The meaning of the words "employer" and "employee" depends upon the rule of construction to be applied and involves an important question which should be settled by this Court.

The importance of the question lies in the fact that lower courts have distinguished the need for a broad or literal construction of the Act upon whether the proceedings were criminal or civil. In *Blassie v. Kroger Company*, supra, the Circuit Court construed the statute broadly, but stated (p. 68):

> "Our general approach. We recognize that the Supreme Court, in Arroyo v. United States, supra, at p. 424 of 359 U. S. 79 S. Ct. 864, said, as to §302, 'We construe a criminal statute'. See also United States v. Ryan, 350 U. S. 299, 305, 76 S. Ct. 400, 100 L.Ed. 335 (1956). We are aware, too, that in Arroyo a bare majority went on to say that 'a literal construction of this statute does no violence to common sense', that the majority gave the statute a narrow application to the facts there presented, and that the minority stated, p. 433 of 359 U. S., 79 S. Ct. p. 872, 'Section 302(b) is in all practical effect repealed'. Arroyo, however,

was an appeal from the affirmance of a judgment of conviction in a criminal case.

"We are concerned here, instead, with requested civil relief under §302(e). We do not believe that in this posture the Supreme Court majority in Arroyo would rigidly pursue the strict construction which a criminal statute customarily receives. We would prefer to approach our present task with a construction policy favoring inclusion and benefits where there is no positive statutory language or inference of exclusion, rather than one favoring exclusion and a denial of benefits where there is no positive language of inclusion."

The Court further stated (p. 70):

"We do not regard our conclusion as at all violative of any call by Arroyo for literal construction of the statute. All we do in this civil proceeding is to construe the term 'employees' to mean covered current employees and persons who were covered current employees but are now retired. This is not non-literal construction but one which, we think, comports with the ordinary and literal meaning of the term . . ."

However, in *Employing Plasterers Association v. Journeymen, Etc.*, 279 F.2d 92 (7th Cir., 1960), that Court held that a literal interpretation was proper in a civil action, stating (p. 97, 98):

". . . Employers who are thus charged with statutory duties and who may be subject to criminal penalties for violations of this section have a sufficient interest in the legality of welfare funds, as defined in the statute, to invoke the remedy provided in Section 302(e) for alleged violations of the section. A literal reading of the statute as well as judicial applications of Section 302(e) support this conclusion. Such light

as may be shed on the congressional intent in the enactment of the section by its legislative history does not militate against this determination."

The applicable rule for the construction of Section 302 should not turn upon a consideration of whether criminal enforcement is sought under §302(d), or civil enforcement under §302(e), since the only substantive distinction between these provisions is the existence of "wilfulness" as a prerequisite to criminal penalties. In all other respects the conduct violative of the statute remains the same.

Nevertheless, it becomes increasingly more evident that lower Courts have used different rules of construction depending upon the nature of the proceeding, and the confusion and uncertainty thereby resulting requires that this Court exercise its discretion in favor of issuing the writ so that some semblance of order and symmetry will be restored.

3. THE COURT OF APPEALS DECISION HAS RAISED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT, BUT SHOULD BE SETTLED BY THIS COURT.

Automation has simultaneously produced increased benefits and problems of national importance. The President's Advisory Committee on Labor Management Policy, Report on Automation (G. P. O., January 11, 1962). United States Department of Labor Bulletin No. 1319, Implications of Automation and other Technological Developments.

A major method for meeting the impact of job elimination or reduction has been the creation of funds which are given by management to labor as the quid pro quo for the voluntary and orderly relinquishment of jobs.

The decision below certainly has a material effect upon the rights of the individual litigants. However, its importance lies not in their interest alone, but when viewed against the increasing growth in the number of funds, a considered construction of the terms "employer" and "em-

ployee" by this Court will have a marked effect upon the development and stability of welfare funds needed in this age in order to ameliorate against the hardship visited upon labor due to automation.

The result reached below was based upon the faulty premise that because longshore employment is casual in nature, the statutory terms should be given an otherwise expanded meaning which in this case permits the "waterfront" to be the employer.

By analogy §302(c)(5) would likewise permit all members of a seamen's union to participate equally in a fund created by a single shipping company because the "sea" is each sailor's employer.* Similar reasoning could apply with equal force to the construction trades, where the union member performs work for numerous business concerns during the course of a year.

Because of the importance of the questions involved, and the sweeping scope of the decision, petitioners submit that the present controversy is one that calls for the issuance of the writ.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari herein be granted April 25, 1966.

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* The District Court's construction of §302(c)(5) has a direct bearing upon the meaning to be given to identical language found in Title 46 U. S. C. §599(g).

APPENDIX

JUDGMENT OF THE COURT OF APPEALS

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the District Court, filed September 29, 1964, be and the same is hereby affirmed, with costs.

Attest:

IDA O. CRESKOFF
Clerk

January 27, 1966

DECISION OF THE COURT OF APPEALS

(Filed January 27, 1966)

PER CURIAM.

Much of the previous history of this case is set out in 217 F.Supp. 401 (E.D. Pa. 1962), *id.*, 404 (E.D. Pa. 1963) and 223 F.Supp. 489 (E.D. Pa. 1963), and need not be repeated here. The agreement was reformed in accordance with the opinion last cited and as required by it. See *id. supra*, 496. An examination of the record and of the briefs and consideration of the oral arguments lead us to the conclusion that the court below committed no error. Consequently, the order of the court below requiring judgment to be entered for the defendants and dissolving the injunction restraining the transfer of money from the royalty fund will be affirmed.

OPINION OF THE DISTRICT COURT

JOSEPH S. LORD, III, *J.* November 21, 1963

This case is now before the court after hearing on plaintiffs' motion for a preliminary injunction to restrain the transfer of money from a trust fund established pursuant to a collective bargaining agreement between defendants International Longshoremen's Association, Local 1291 (ILA), and the Philadelphia Marine Trade Association (PMTA). PMTA is an association of companies, including stevedoring companies, rendering marine service in the Port of Philadelphia. It acts as the collective bargaining agent for its members with the ILA. ILA is the collective bargaining agent for all deepsea longshoremen who engage in the loading and discharging to oceangoing vessels in the Port of Philadelphia. Plaintiffs are longshoremen who are members of the ILA and who formerly were engaged fairly regularly at the Pennsylvania Sugar Division pier in the unloading of raw sugar for Jarka Corporation, a stevedoring company and a member of PMTA.

On December 23, 1959, PMTA and ILA entered into a collective bargaining agreement (hereafter called the Agreement) which contained the following provision [§13(d)]: ". . . Should a system of royalties be determined between the parties hereto as an appropriate method of compensating longshoremen who may lose their job opportunities as a result of technological advancements, then the amount of such royalty shall be predicated upon the royalties paid for the same or a similar device in the Port of New York. . . ."

Shortly after the Agreement was entered into, Pennsylvania Sugar notified PMTA of a proposed change in method of unloading sugar. Under the new system which was later put into effect, the number of men regularly employed was reduced from 133 to less than 60.

PMTA and ILA then entered negotiations under §13(d) with respect to Pennsylvania Sugar's change in method. On February 26, 1960, an agreement (hereinafter called Supplemental Agreement) was reached whereby the "PMTA-ILA, Local 1291, Royalty Fund" was established, with contributions to be made by the employers at a rate of twenty-eight cents per 2240 pounds of sugar unloaded.

Pursuant to the Supplemental Agreement, funds were paid by Jarka into a bank account which was accompanied by a letter from the attorneys of both the PMTA and ILA instructing the bank to hold the funds until submission of a trust agreement.

This action was instituted on January 22, 1962, by plaintiffs, "sugarworkers", claiming that they alone were entitled to the fund both as a matter of law and as a factual matter,—that they were the sole intended beneficiaries of the agreements between PMTA and ILA. At the time, no trust agreement had yet been entered into by the parties.

Defendants moved to dismiss. We denied the motion on June 26, 1962, 217 F.Supp. 401 (E. D. Pa., 1962), holding that plaintiffs had stated a valid cause of action under §302 of the Labor-Management Relations Act, there being no trust agreement in existence which complied with §302(c)(5).

Thereafter, on July 19, 1962, an "Agreement and Declaration of Trust" (hereafter called Trust Agreement) was entered into between PMTA and ILA and defendants again moved to dismiss, this time contending that the Trust Agreement complied with §302(c)(5). Plaintiffs, in the meantime amended their complaint to state an additional cause of action under §301 of the Act, contending that their asserted contractual right to the fund could be enforced under this section. SMITH v. EVENING NEWS ASSOCIATION, 371 U. S. 195 (1962). This court agreed that there was at least an alleged contractual right, and since a factual question was involved which could not be decided on a motion to dismiss, the motion was denied. We

found it unnecessary to decide at that time whether the Trust Agreement was in compliance with the Act: 217 F.Supp. 404 (E.D. Pa., 1963).

The Trust Agreement as finally drafted provided that the purposes to which the fund could be put might include either supplemental unemployment benefits to any longshoremen credited with 9,000 hours during the thirteen preceding years, and/or contributions to an existing welfare fund to maintain eligibility for longshoremen who lost eligibility due to insufficient work, and/or contributions to an existing pension fund, again to maintain eligibility, and/or "such other benefits . . . as are actuarially feasible." A specific program was to be adopted by the trustees but before becoming effective it had to be submitted to the parties to the agreement, the PMTA and ILA, for their approval. Thereafter, the trustees adopted a resolution (hereafter called the Resolution) providing for payments from the Royalty Fund to the Welfare Fund and to the Pension Fund.

I. *The Collective Bargaining Agreement and the Supplemental Agreement*

Initially, plaintiffs contend that they as sugarworkers were the sole intended beneficiaries of the collective bargaining contract and supplementary agreement. The intent of the parties, they say, was to benefit the specific "sugarworkers" laid off as a result of changes in sugar cargo handling methods, whereas the Trust Agreement would dilute plaintiffs' rights by extending benefits to all longshoremen in the unit.

The proof has failed to sustain plaintiffs' contention. The testimony makes it clear that §13(d) was not incorporated into the Agreement with only sugarworkers in mind. Underlying its adoption was the fact that there had been a tremendous loss of job opportunities in New York because of technical advances that had nothing to do with sugar, such as containerization and side-port loaders.

Robert G. Kelly, Esquire, counsel for PMTA and also a defendant, testified (N. T. pp. 195, 196):

> ". . . What the ILA was concerned about and what the New York Shipping Association had recognized was the tremendous loss of job opportunities through containerization, side-port loaders, and matters such as that. For example, a container can come into a port, loaded somewhere in the outlands, and be lifted on the ship in a very simple mechanical operation. In addition, the Grace Line had put in a sideloader that conveyed and stowed cargo with one man operating a machine where twenty-one had previously been used. These were the things that everybody was concerned about. . . . And I can assure you that we weren't thinking about sugar; We were thinking about containerization, side-port loaders, and other methods of automation. . . ."

There is no doubt that §13(d) was analogized to the New York situation, for it provides "that the amount of the royalty shall be in proportion to the royalty paid in New York as the reduction in the number of men employed bears to the reduction in the number of men employed in the Port of New York."

Furthermore, the whole underlying history of §13(d) shows that the thought behind it long antedated the sugar changeover. Indeed, the genesis of the concept was the use by Lavino (a stevedoring firm) of a "slusher", a machine to move cargo to the center of the hold, sometime before 1955. In 1955, Pennsylvania Sugar adopted a conveyor system in the form of a monorail. The Union and PMTA were unable to agree on the minimum number of men to be employed after the change. The Union contended that this was a matter for negotiation; PMTA contended that the dispute was subject to arbitration. A strike resulted. In a suit to compel compliance with the collective bargaining agreement, the Pennsylvania courts held with PMTA.

PHILA. MARINE TRADE ASSOCIATION v. LONGSHOREMEN'S ASSOCIATION, 382 Pa. 326 (1955). It was as an outgrowth of this broad dispute that §13(d) was incorporated into the Agreement in its present form. It is clear that when the Union negotiated the present §13(d), it did so for the group it represented,—The Union,—and not for an isolated, capsulized segment of the group.

It is quite clear from the circumstances surrounding the inclusion of §13(d) in the Agreement and from the stated intention of the parties themselves that the trust of that Section is not to be confined solely to sugarworkers, but is for the benefit of all longshoremen who lose job opportunities as a result of technological advances.

The conclusion we have reached follows settled principles of contract law. The parties to the Agreement are, of course, PMTA and ILA. Both of these parties agree that the construction we have placed on §13(d) expresses their intent, and the construction placed upon a contract by the parties themselves will be adopted. SHARON HERALD CO. v. GRANGER, 97 F.Supp. 295 (W. D. Pa., 1951). Furthermore, in 3, CORBIN, CONTRACTS, it is said, Section 537:

> ". . . When two parties enter into a contract providing for the transfer of property or for conferring any other benefit upon a third party, interpretation should ordinarily be directed to determining the meaning given to the terms of the contract by the two parties who made it. The meaning given to the terms by the third party would be immaterial unless concurred in by the contractors or unless the terms are such as to invite action in reliance thereon by the third party. . . ."

The Supplemental Agreement of February 26, 1960, does not advance plaintiffs' position. Here again, the negotiators had in mind all longshoremen, and not an isolated unit.

A longshoreman goes every day to a "shape-up". If

there is work, he works; if there is not, he doesn't. There are between 15 and 18 stevedoring companies along the Philadelphia waterfront, and a longshoreman may work for one of these on Monday, another on Tuesday, and a third on Wednesday. See NATIONAL LABOR RELATIONS BOARD v. TRUCK DRIVERS' UNION, etc., 353 U. S. 87, 94 (1957). Displacing one of these peripatetic workers by automation is like dropping a pebble into a pond, —the ripples spread until the last ripple breaks on the shore. The man who loses a job opportunity with Jarka may displace a man who could have worked for McCarthy, and he, in turn, displaces a man who could have worked for Nacerima.[1] Thus, while it may be virtually impossible to individuate precise men who lost job opportunities through technical advancements at the sugarhouse, nevertheless the McCarthy worker and the Nacerima worker and the rest of the chain that follows them are as much affected by the new sugar unloading methods as is the man who started the reaction.

It is true that at some piers there are more or less regular gangs of workers, the same men being employed at that pier whenever work is available. This was the case at the sugar pier. This does not, however, compel the conclusion that only sugarworkers were affected and that only they were to be benefited. Again, Mr. Kelly testified (N. T. p. 196):

> "This contract—when I say 'lose job opportunities,' I mean all over the waterfront, because if they use containers at one pier the men who do not get a job at that pier will go to another pier to get a job, and that is what we were thinking about. And we were thinking that 'lose job opportunities' applied to the bargaining unit, not to any isolated situation. . . ."

Kelly also testified (N. T. pp. 216-217):

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[1] McCarthy and Nacerima are stevedoring companies.

"A I think they [the sugarworkers] are certainly the first people to be considered; but then the repercussions from that caused other longshoremen to lose job opportunities.

"Q So the only other longshoremen besides the men that worked at Pier 46 who would be entitled, in your opinion, to the fund would be those who could show that they had lost job opportunities as a result of a sugar worker from Pier 46 taking their job?

"A No, I will not subscribe to that at all, because there are very few people that we would be able to identify. We know they did. When, what days, what weeks, what months, your people from the sugarhouses took their jobs it would be almost impossible to identify them, but we know the men who lost their jobs first are the older men, and that is why in the trust agreement we provided to keep them eligible by payments from the fund for welfare and pension benefits."

However, mere difficulty of identification is not enough to foreclose an intended beneficiary of a fund from sharing in the fund. Even though those displaced by chain reaction may be faceless, they were nonetheless hurt as surely as the sugarworkers were. We cannot and will not conclude that the Union (or PMTA) intended by the Supplemental Agreement to ignore all injured longshoremen except sugarworkers. The Supplemental Agreement was intended to implement §13(d) of the collective bargaining agreement. Both were equally intended for the benefit of *all* longshoremen who lost job opportunities through automation.

II. *The Trust Agreement and the Resolution*

Section 302 (c) (5) is almost a perfect legislative blueprint for a trust agreement involving a fund such as we

have before us. The Section practically spells out the required terms of such an agreement. Among the requirements is that ". . . (B) the detailed basis on which such payments [to employes] are to be made is specified in a written agreement with the employer. . . ." The present Trust Agreement falls short of this requirement. It provides, in Article II, Section 2, four different options, any one or all of which the trustees may adopt.[2] This lack of specificity is clearly condemned by the Act, and although the statutory language is clear enough our conclusion that the Trust Agreement in its present form is violative of the Act is supported by the legislative history. In UNITED STATES v. MISSOURI PACIFIC R. R., 278 U. S. 269, 278, (1929), the Court said:

> ". . . Where the language of an enactment is clear, and construction according to its terms does not lead to absurd or impracticable consequences, the words employed are to be taken as the final expression of the meaning intended. And in such cases legislative history may not be used to support a construction that adds to or takes from the significance of the words employed. . . . *But the reasons for and the significant circumstances leading up to the enactment may be noticed in confirmation of the meaning conveyed by the words used.* . . . (Emphasis added.)

Reference to the legislative history shows that the Act was intended to prohibit any receipt of money by unions from employers unless the precise use to which the money shall be put is delineated.

In UNITED MARINE DIVISION, I.L.A. LOCAL 333 v. ESSEX TRANSPORTATION CO., 216 F. 2d 410 (C. A. 3, 1954), the court said, at page 412:

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[2] Supplemental unemployment benefits, and/or contributions to a welfare fund, and/or contributions to a pension fund, and/or "such other benefits . . . as are actuarily feasible."

". . . Thus, Senator Taft said: ' . . . the purpose of the provision is that the welfare fund shall be a perfectly definite fund, that its purpose shall be stated so that each employee can know what he is entitled to, can go to court and enforce his rights in the fund, and that it shall not be, therefore, in the sole discretion of the union or the union leaders and usable for any purpose which they may think is to the advantage of the union or the employee . . . The tendency is to demand a welfare fund as much in the power of the union as possible. Certainly unless we impose some restrictions we shall find that the welfare fund will become merely a war chest for the particular union . . .'
93 Cong. Rec. 4746-7 (1947)."

We therefore hold that the payments by Jarka are in violation of § 302 of the Labor-Management Relations Act because the Trust Agreement does not specifically delineate the purpose to which the payments must be put.

Plaintiffs further argue that § 302 permits only employes of the employer making the contribution to share in the fund so created, and since only Jarka contributed only its employes may benefit.[3] The difficulty here lies in determining who are Jarka employes. Certainly these plaintiffs are. But they are by no means Jarka's only employes. Jarka works all up and down the waterfront. It, like every other stevedoring company, may employ different men from day to day. Is the man who works a week out of the year, or a month, or six months for Jarka and who works the remaining time for different companies a Jarka employe? And finally, is a longshoreman who did no work for Jarka,

[3] The exception here involved to the general prohibitions of §302 applies ". . . (5) with respect to money or other things of value paid to a trust fund established by such representative for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families and dependents jointly with the employees of other employers making similar payments, and their families and dependents)."

but who is displaced by an automation-displaced Jarka employe to be denied benefits solely because of his lack of direct association with Jarka, even though, as we have found, the Agreement was intended to benefit all longshoremen? Those are difficulties of solution that arise from the very nature of waterfront employment. They are difficulties that the contracting parties recognized and attempted to resolve by the inclusion of Article I, Sections 2 and 6 in the Trust Agreement:

> "*Section 2*—'Employer' means and includes those stevedores who are members of the PMTA. As of the date of this agreement, the only operation subject to the payment of royalties is the discharging of bulk raw sugar from ocean-going vessels in the Port of Philadelphia under contract with the National Sugar Refining Company, Pennsylvania Sugar Division.
>
> "*Section 6*—'Employee' shall mean any employee in the employ of the Employer who shall be included now or shall be included in the future in the collective bargaining unit represented by the Union."

Those definitions recognize the realities of stevedoring-longshoring: a longshoreman is the employe of the waterfront and the waterfront is his employer.

Ordinarily, where the parties to a contract define the terms used in the contract, these definitions will govern. The definitions in Article I, Sections 2 and 6 are perfectly clear and reasonable, and under normal circumstances they would control. Does § 302 make them illegal, and hence incapable of enforcement? There are two alternative approaches to the problem. The first is to adhere to the rigid, conceptualistic notion of the employer-employe relationship. Even this narrow approach presents problems of definition, for, as we have seen, the ordinary constancy of such relationship does not exist on the waterfront. This approach would deny any benefit to a worker undoubtedly injured by automation, but who had the fortuitous misfortune never to have worked for Jarka.

The alternative is to look to facts, and not to vacuum-packed concepts. It is, very simply, to recognize the facts that the tutored parties to this Trust Agreement recognized: that longshoremen work for every stevedore, and that the stevedores as a group should be considered as the "employer" in applying § 302 (C) (5).

Welfare and pension funds are desirable. See UNITED MARINE DIVISION v. ESSEX TRANSPORTATION CO., 216 F. 2d 410 at 411 (C. A. 3, 1954). See also UPHOLSTERERS' INTER. UNION v. LEATHERCRAFT FURN. CO., 82 F. Supp. 570. No court can escape recognizing the beneficial nature of the trust fund here in question. This is an agreement to provide for those who for a number of years have had fairly regular employment on the waterfront and whose services have become less in demand because of technological changes. The stevedores have agreed to compensate these longshoremen by maintaining their eligibility in pension funds or welfare funds or providing supplemental unemployment benefits if their eligibility for these benefits has been threatened by a decline in hours of employment.

This court is not blind to the evils possible when large amounts of money are paid to a union trust fund. (In another part of this opinion we have recognized the necessity of those safeguards required by the Act and ordered that those safeguards be instituted.) But neither can we help noticing the obvious hopeless position into which the ILA and PMTA would be thrust if the court were bound to agree with plaintiffs' literal reading of § 302 (c). Such a literal reading would preclude the stevedores from setting up any fund effectively providing for the amelioration of the harmful effects of technological unemployment unless all stevedores participating agreed to contribute to the fund, despite the fact that only one had instituted technological advancements. To expect the others to contribute would be unrealistic.

In SORRELLS v. UNITED STATES, 287 U. S. 435 (1932) Chief Justice Hughes said, at pages 446-447:

> ". . . Literal interpretation of statutes at the expense of the reason of the law and producing absurd consequences or flagrant injustice has frequently been condemned. . . . In United States v. Kirby, 7 Wall. 482, 19 L. ed. 278, . . . the Court said: 'All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter.' . . ."

Furthermore, a less than literal interpretation of §302 does no violence to Congressional aims and frustrates no Congressional policy. A reading of the legislative history of §302 compels the conclusion that the restriction of "employees of such employer" was inserted in the Act to serve a limited function. Congress' attention had been focused upon the situation in which a union attempted to extract from an employer a promise to make payments to a union that represented employes of one or perhaps more than one employer. Congress considered these payments as substitutes for wages or salaries normally paid directly to the worker. 93 CONG. REC. 4746 (2-3) and 4747(1). I LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT 1947, 458. Theoretically, an employer is willing to pay a certain amount of money for a given unit of work. If an employer agreed to give five cents to a union trust fund for every hour of work by an employe, the hourly wage paid directly to the employe would be five cents less. It is only just, said Congress, that the employe whose hour's work required the employer to make a payment of five cents to the trust fund be assured of reaping the benefit of that payment. See SENATOR BALL, II LEGISLA-

TIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT, 1322 and 1498.

Congress did not want the union to use these funds for non-union or even general union purposes. 92 CONG. REC. 5181(1) and 5345(1-2).[4] Nor, presumably, did it want a union representing employes of more than one employer to use the funds provided by only one employer for the benefit of all the employes represented by the union without regard to which of the union members had earned the right to this payment. These are the evils that Congress sought to avert and no others have been advanced in explanation of the provision in question.

In the instant case, the employer-stevedore will make a payment of twenty-eight cents for every 2240 lbs. of sugar unloaded. This payment is not a substitute for a wage. It is not being made for labor that has been performed by any of the longshoremen who unloaded the 2240 lbs. It is instead payment to the longshoremen whose labor, because of a change in the technique of unloading sugar, is rendered unnecessary and it is not always the man who yesterday unloaded sugar by the old technique who has lost the opportunity of working. That man can go to the next pier and get a work ticket with another gang and perhaps a different employer. It is because of this interchangeability of longshore employment noted previously in this opinion that a man ultimately affected by one steve-

[4] Section 302 had its origin in an amendment to the Case bill, HR 4908, 79th Cong. 2d Sess., proposed by Senator Byrd, 92 Cong. Rec. 4809, which prohibited payment by an employer, or receipt by a representative of any money or other thing of value unless the payment was for wages or for union dues withheld by the employer under a checkoff agreement. After several modifications, including one substantially similar to subsection (c)(5) which was proposed by Senators Taft and Ball, the amendment was agreed to by the Senate, 92 Cong. Rec. 5521-5522, and the Case Bill passed. 92 Cong. Rec. 5739. The House accepted the Senate amendments, 92 Cong. Rec. 5946, but the President vetoed the bill, 92 Cong. Rec. 6674, 6678, and it failed of passage over his veto. 92 Cong. Rec. 6678.

dore's change in *modus operandi* is not always the employe of that stevedore. There is, therefore, no evil that Congress intended to provide against inherent in the Trust Agreement's providing that those other than former sugarworkers may benefit.

This court is reluctant to construe an ambiguous provision of a statute so as to extend its prohibition beyond the evil that Congress intended to cure. As Judge Medina in GILBERT v. COMMISSIONER OF INTERNAL REVENUE, 248 F.2d 399 (C. A. 1957), at page 404: ". . . statutory terms are not to be interpreted independent of their context and underlying policy. Legislative words are not inert and derive vitality from the obvious purposes at which they are aimed. . . ."

Parenthetically, we note that §302(c)(5)(C) provides:

> "Such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities . . ."

Of course, if the Agreement is reframed with the specificity required by the Act, and if the use to be made of the moneys is the maintenance of pension rights, then the Agreement itself will provide the "separate trust" required by the Act.

We therefore hold that in light of the peculiar demands of the stevedoring industry, the Trust Agreement does not violate §302 in permitting payments to or for the benefit of other than Jarka employes.

The facts and legal conclusions stated in this opinion may be deemed the court's findings of fact and conclusions of law.

ORDER

AND NOW, November 21, 1963, upon consideration of the pleadings and proof, IT IS ORDERED that defendants are enjoined from paying out any moneys from the PMTA-ILA Royalty Fund under the Trust Agreement of July 19, 1962, unless and until the defendants exhibit to the court a Trust Agreement drawn in accordance with this Opinion.

By THE COURT

/s/ JOSEPH S. LORD, III
J.